

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 19-CR-02

vs.

ALEXANDER P. BEBRIS,

Defendant.

**DEFENDANT'S MOTION TO SUPPRESS
EVIDENCE AND STATEMENTS**

Defendant Alexander P. Bebris, by his attorneys Gimbel, Reilly, Guerin & Brown LLP, respectfully moves the court, the Honorable William C. Griesbach, Chief Judge presiding, and the Honorable David E. Jones, United States Magistrate Judge, pursuant to Federal Rule of Criminal Procedure 12(3)(c) and Criminal Local Rule 12.3, for an order suppressing physical evidence and statements derived from an illegal search of Bebris's private Facebook messages pursuant to the Fourth, Fifth and Sixth Amendments of the United States Constitution, *Katz v. U.S.*, 389 U.S. 347, 88 S.Ct. 507 (1967), and *Skinner v. Railway Labor Executives' Ass'n*, 489 U.S. 602, 109 S.Ct. 1402 (1989).

Pursuant to Criminal Local Rule 12(c), Bebris requests that an evidentiary hearing be held on this motion at a time convenient to the Court and counsel. At such hearing, the principal legal issues will focus on: (1) whether the National Center for Missing & Exploited Children ("NCMEC"), PhotoDNA, and Facebook acted as government agents

in their warrantless searches of Bebris's private Facebook messages; (2) the coordination between NCMEC, PhotoDNA, and Facebook; (3) whether the government expanded any prior private search when it examined the alleged images in Bebris's private Facebook messages; (4) the circumstances surrounding the interception and search of the messages at issue in this motion, including the need to call the recipient of the intercepted message to testify regarding her observations; and (5) testimony from law enforcement regarding the creation of the Cybertip report, which the defense has not received in discovery, and whether the law enforcement activities related to the investigation of the Cybertip violated Bebris's Fourth, Fifth and Sixth Amendment of the United States Constitution.

Defense counsel has communicated and spoken with Assistant United States Attorney Dan Humble regarding this case, and he has indicated that he wishes to review the motion and brief, and then determine his position on the need to have an evidentiary hearing.

Bebris and his counsel believe that the material facts in dispute necessitating an evidentiary hearing include: (1) whether NCMEC is a government agent and violated Bebris's Fourth Amendment rights through a search of Bebris's private Facebook messages; (2) whether PhotoDNA is a government agent and violated Bebris's Fourth Amendment rights through a search of Bebris's private Facebook messages; (3) whether Facebook is a government agent and violated Bebris's Fourth Amendment rights through a search of Bebris's private Facebook messages; and (4) whether law enforcement agents impermissibly expanded any private search in violation of Bebris's Fourth Amendment when they opened and viewed images that were not previously opened in a private

search. Bebris requests suppression of all evidence obtained, statements made and anything else derived from the entry, search, seizure, interrogation and subsequent forensic examinations as fruits of the poisonous tree. *Wong Sun v. United States*, 371 U.S. 471 (1963).

Defense counsel estimates that the in-court time necessary for the hearing will be two to five (2-5) hours. An initial statement of grounds for granting this motion is set forth in the memorandum and affidavit of counsel submitted along with this motion. Bebris and his counsel reserve the right to provide supplemental arguments before, during and after any evidentiary hearing that is held, per his request for same herein.

WHEREFORE, Bebris respectfully requests that the Court suppress his statements and suppress all evidence obtained and derived from the search, seizure, interrogation and examination of computers thereafter. Bebris further requests that an evidentiary hearing be held on this motion at a time convenient to the Court.

Dated this 22nd day of August, 2019.

Respectfully submitted,

GIMBEL, REILLY, GUERIN & BROWN LLP

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/s/ Jason D. Luczak

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